

REMARKS

Applicants thank the Office for withdrawing the finality of the Office Action of September 16, 2010. The Office now rejects the claims for double patenting over co-pending application 11/202,276.

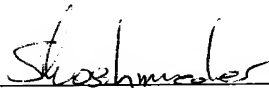
Applicants pointed out reasons for the withdrawal of the rejection in the arguments submitted on November 16, 2010. Irrespective of the impropriety of the rejection, Applicants submit herewith a Terminal Disclaimer over 11/202,276 to obviate the rejection.

The filing of a Terminal Disclaimer is not an admission of obviousness. As stated by the Federal Circuit in *Ortho Pharmaceutical Corp. v. Smith*: “[i]n legal principle, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection. It is improper to convert this simple expedient of ‘obviation’ into an admission or acquiescence or estoppel on the merits.” See *Ortho Pharmaceutical Corp. v. Smith*, 22 USPQ2d 1119, 1124 (Fed. Cir. 1992).

For the reasons discussed above in detail, Applicants request withdrawal of the rejections and the allowance of all now-pending claims.

Respectfully submitted,

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